

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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OLEG REGEDA,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, AND Detective RICHARD
CALABRO (shield #415),

Defendants.

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MATSUMOTO, United States District Judge:

BACKGROUND

On December 11, 2009, plaintiff Oleg Regeda ("plaintiff"), who is currently acting *pro se*, commenced the instant action against The City of New York (the "City"), the New York City Police Department (the "NYPD"), and Detective Richard Calabro ("Detective Calabro") (collectively, "defendants"), alleging that defendants unconstitutionally arrested and prosecuted him in September of 2008. (See ECF No. 1, Compl. ¶ 2.) Plaintiff's complaint alleges constitutional claims against defendants pursuant to 42 U.S.C. §§ 1983 and 1985, as well as false arrest, false imprisonment, negligent and intentional infliction of emotional distress, common law negligence, malicious prosecution, and common law negligent hiring and supervision pursuant to New York state law. (See *id.* ¶¶ 51-93.) On July 21, 2011, defendants filed a motion for

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

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judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). (See generally ECF No. 18, Mot. to Dismiss.)

Presently before the court is a Report and Recommendation issued by Magistrate Judge Viktor V. Pohorelsky on September 7, 2012, recommending that the court grant in part and deny in part defendants' motion for judgment on the pleadings, and grant plaintiff leave to partially amend his complaint. (See ECF No. 29, Report and Recommendation ("R&R") at 1.)

As is explicitly noted at the end of the Report and Recommendation, any objections to the Report and Recommendation were to be filed within 14 days of receipt of the Report and Recommendation. (R&R at 23.) Defendants served the Report and Recommendation on plaintiff by overnight mail on September 11, 2012. (See ECF No. 30, Decl. of Service.) On September 20, 2012, plaintiff filed a motion requesting an extension of time to file objections to Magistrate Judge Pohorelsky's Report and Recommendation, citing his current health and housing troubles, as well as his desire to retain counsel to represent him in this case. (See ECF No. 31, Mot. for Extension of Time.) On September 25, 2012, the court issued an order expressing concern regarding plaintiff's ability to prosecute this case, and therefore staying this matter for three months, until December 21, 2012, by which date plaintiff was ordered to submit a letter

to the Pro Se Office advising the court as to whether he was prepared to prosecute this case. (See Order of Sept. 25, 2012.) If plaintiff was able to resume prosecution of his case by December 21, 2012, the court would then reinstate defendants' motion for judgment on the pleadings and set a new deadline for submission of objections to Magistrate Judge Pohorelsky's Report and Recommendation. (See *id.*)

On December 28, 2012, the court received a letter from plaintiff dated December 19, 2012, stating that he was ready to prosecute his case. (See ECF No. 34, Ltr.) Later that same day, the court issued an order granting plaintiff one final extension, until January 11, 2013, to submit his objections, if any, to the Report and Recommendation. (See Order of Dec. 28, 2012.) The court also stated that plaintiff's failure to submit objections by January 11, 2013 would result in the court reactivating defendants' motion and deeming the Report and Recommendation unopposed. (See *id.*) A copy of this order was mailed to plaintiff by chambers that same day. (See *id.*)

DISCUSSION

To date, neither plaintiff nor defendants have submitted objections to Magistrate Judge Pohorelsky's Report and Recommendation. Accordingly, the court hereby reactivates defendants' motion for judgment on the pleadings and finds that no objections were filed to the Report and Recommendation.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a careful review of the Report and Recommendation and the record in this case, and considering that neither party has objected to any of Magistrate Judge Pohorelsky's thorough and well-reasoned recommendations, the court finds no clear error in the Report and Recommendation and hereby affirms and adopts it as the opinion of the court.

CONCLUSION

For the foregoing reasons, the court grants in part and denies in part defendants' motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c), and grants plaintiff leave to amend in part his complaint within thirty (30) days of the date of this order, as follows: (1) plaintiff's claims against the NYPD are dismissed with prejudice; (2) plaintiff's claims for municipal liability against the City pursuant to 42 U.S.C. §§ 1983 and 1985 in

Claims 6 and 8 of the complaint are dismissed with prejudice; (3) plaintiff's claims for negligent and intentional infliction of emotional distress against all defendants in Claims 3 and 4 are dismissed with prejudice; (4) plaintiff's denial of medical treatment claim pursuant to 42 U.S.C. § 1983 against Detective Calabro in Claim 9 is dismissed with leave to re-plead this claim within thirty (30) days of the date of this order; (5) defendants' motion is denied as to all other claims. To summarize, plaintiff's Claims 1, 2, 5, 7, and 10 remain as to all defendants other than the NYPD, and plaintiff has until March 19, 2013 to re-plead Claim 9 against Detective Calabro.

Defendants are directed to serve a copy of this Order upon plaintiff and to file a certificate of service via ECF by February 20, 2013. The parties shall confer and report to the court jointly by ECF regarding how they intend to proceed, including whether plaintiff or defendants intend to make a motion for summary judgment, no later than March 26, 2013, one week after plaintiff's deadline to file an amended complaint.

SO ORDERED.

Dated: February 19, 2013
Brooklyn, New York

_____/s/_____
Kiyo A. Matsumoto
United States District Judge
Eastern District of New York